

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES</b>	:	<b>CRIMINAL ACTION</b>
	:	
<b>v.</b>	:	<b>NO. 06-548</b>
	:	
<b>NEZZY ADDERLY</b>	:	
	:	

**MEMORANDUM AND ORDER**

**Kauffman, J.**

**April 24, 2007**

Defendant Nezzzy Adderly has filed a Motion to Suppress a firearm that was found on his person by the Philadelphia Police Department on December 29, 2005. An evidentiary hearing was conducted before this Court on April 18, 2007. For the reasons that follow, the Motion will be denied.

**I. Background**

On December 29, 2005, Philadelphia Police Officers Joseph Domico and Sean Devlin were conducting undercover surveillance in the 4600 block of Hawthorne Street, Philadelphia, PA, a high crime area. These officers were assigned to the Philadelphia Narcotics Strike Force, a unit devoted to fighting gun and drug crimes in high crime areas. Uniformed police officers, stationed several blocks away from Officers Domico and Devlin, were prepared to “move-in” whenever the surveillance team advised them to proceed. These uniformed officers included Thomas Donahue, Michael Riccardi, and Brian McCabe.

Shortly after setting up the surveillance, Officer Domico observed a female, later identified as Barbara Forrest, standing by the front door of Bo and Mo’s Escape Lounge, located at 4691 Hawthorne Street. A male, later identified as Kevin Garland, approached Forrest and

exchanged money for a small unidentified object from her pocket. The surveillance team notified the uniformed Strike Force officers and they intercepted Garland as he was driving away from the bar. The officers recovered from Garland's person a clear plastic packet that contained marijuana.

At approximately 7:35 p.m., after observing Forrest conduct what appeared to be a second drug exchange, the surveillance team radioed a description of Forrest to the uniformed members of the Strike Force and requested that they arrest her. In response, Officers Donahue, Riccardi, and McCabe, rushed through the front door of Bo and Mo's to apprehend Forrest.

Officers Donahue and Riccardi testified that, upon entering the small bar, they observed Defendant and two other men sitting or standing in the middle of the bar area. Once the men saw the police officers, they "tensed up," turned, and attempted to flee by using a back door. As Officer McCabe arrested Forrest, Officers Riccardi and Donahue prevented the men from fleeing. Officer Donahue "patted down" Defendant and recovered a handgun that was tucked under his belt. The handgun was a Taurus, 9mm semi-automatic loaded with eight live rounds. Defendant, a convicted felon without a license to carry a firearm, was arrested by Officer Donahue.

Defendant testified that he was scheduled to work as a disc jockey at Bo and Mo's that night, and that when the police officers rushed in, he and the two other males were headed for the back door to retrieve stereo equipment from his automobile.

## **II. Analysis**

Defendant has moved to suppress the handgun discovered on his body as an illegal search and seizure proscribed by the Fourth Amendment. As this case involves a brief encounter

between a citizen and a police officer in a public place, it is governed by the Supreme Court's analysis in Terry v. Ohio, 392 U.S. 1 (1968). In Terry, the Supreme Court held that an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot. Id. at 30. When evaluating the reasonableness of a Terry stop, the reviewing court must consider "the totality of the circumstances" surrounding the stop, as viewed through the eyes of a reasonable and cautious police officer on the scene. United States v. Sokolow, 490 U.S. 1, 8 (1989). Reasonable suspicion is a less demanding standard than probable cause and requires a showing "considerably less than preponderance of the evidence." Id. at 7. The Fourth Amendment, however, requires at least a minimal level of justification for making the stop and it cannot be a mere "inchoate and unparticularized suspicion or hunch" of criminal activity. Terry, 392 U.S. at 27, n2.

In this case, Officer Donahue had reasonable suspicion to stop and frisk Defendant. "The fact that the stop occurred in a 'high crime area' is among the relevant contextual considerations in a Terry analysis." Illinois v. Wardlow, 528 U.S. 119, 124 (2000). Here, not only were the police officers operating in a high crime area, they were also aware that narcotics trafficking was actively occurring in the bar. Moreover, the Court finds credible the officers' testimony that Defendant attempted to flee when they entered the bar. "Headlong flight -- wherever it occurs -- is the consummate act of evasion: it is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." Id. (holding officers had reasonable suspicion to pat down a person who fled at their presence in a high crime area). Here, the police officers observed Defendant head toward a back door when they entered the bar. Given the totality of the circumstances, the flight was enough to raise a reasonable suspicion. Id. at 125.

The minimal intrusion of patting down Defendant and the two other men was a reasonable and prudent precaution given the potential dangers faced by the officers.

### **III. Conclusion**

For the foregoing reasons, the combination of factors created a reasonable suspicion of criminal activity and Defendant's Motion to Suppress will be denied. An appropriate Order follows.

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**ORDER**

**AND NOW**, this 24<sup>th</sup> day of April, 2007, upon consideration of Defendant's Motion to Suppress Physical Evidence (docket no. 15), the Government's Response thereto (docket no. 16), and after an evidentiary hearing held on April 18, 2007, it is **ORDERED** that the Motion is **DENIED**.

**BY THE COURT:**

/s/ Bruce W. Kauffman  
**BRUCE W. KAUFFMAN, J.**